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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Colusa)

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THE PEOPLE,

Plaintiff and Respondent,

v.

MANUEL VALENCIA SILVA,

Defendant and Appellant.

C080310

(Super. Ct. No. CR56118)

Defendant Manuel Valencia Silva was found guilty by jury of assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)) and personally inflicting great bodily injury (Pen. Code, § 12022.7, subd. (a)). The victim was his adult niece, Anaberta Valadez. The evidence against defendant consisted mainly of Valadez's statements to medical and law enforcement personnel near the time of the incident, corroborated by her injuries and defendant's admitted presence at the location of the assault. At the preliminary hearing and trial, Valadez claimed not to remember what had

happened to her or testified to different versions of the relevant events, and the People introduced her prior statements as prior inconsistent statements.

Defendant appeals, claiming insufficiency of the evidence. As we will explain, the evidence supporting the jury's verdicts is not so internally inconsistent that we may properly deem it inherently improbable, as defendant asks us to do. Accordingly, we shall affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *Trial Testimony--Valadez's Prior Statements and Documented Injuries*

#### **Jonathan Nelson, R.N.**

Jonathan Nelson was the emergency room nurse who treated Valadez when she was brought into the hospital on May 26, 2014. Valadez told Nelson she "was punched in the left face by her uncle," but did not mention any names in particular. Nelson noted that Valadez had suffered a loss of consciousness and had a two-centimeter laceration near her left eyebrow with no active bleeding.

Valadez, who was slurring her speech, informed Nelson she had been drinking alcohol. She was alert, but thought she was in Woodland rather than Colusa. Nelson rated Valadez 14 out of a possible 15 on the level of consciousness scale. Nelson started an IV and administered Zofran, an anti-nausea medication, as instructed by the doctor. Several hours later, Nelson administered morphine for pain as the doctor sutured Valadez's wound. After speaking with police, she was given instructions and discharged.

#### **Dr. Samuel Medrano**

Dr. Samuel Medrano treated Valadez that same evening, ordering several tests, including a CT of the spine, neck, and head, and prescribing morphine for pain and Zofran for nausea. In his written report, Medrano noted Valadez had a two-centimeter laceration over her left eyebrow and an abrasion to the right of her nose. He noted that Valadez reported that she had been assaulted, but did not identify her attacker. After interviewing Valadez, Medrano wrote in the report, " 'Patient trauma. Status postassault

[¶] . . . [¶] by unnamed, unidentified individual at the mother's home where the patient was visiting.' ” The report also indicated Valadez had suffered injuries to her face, was assaulted with “a fist,” and suffered a loss of consciousness. Valadez had some mild tenderness on her neck and was complaining of a headache. Medrano opined that the tenderness in the neck was consistent with the movement of the head when one is punched in the face. Both loss of consciousness and lack of awareness regarding her location were also consistent with being punched in the face.

### **Colusa County Sheriff's Deputy Jordan Morris**

Colusa County Sheriff's Deputy Jordan Morris was dispatched to the emergency room at Colusa Regional Medical Center the relevant evening. He spoke with Valadez, who appeared to be in a lot of pain, although she appeared to be aware of what she was saying and was *not* “speaking gibberish.” Valadez told Morris “she was at a family cookout and everybody was drinking, and her family advised her that she had fallen down, and that's how she was injured,” but that “she had not fallen down; that someone punched her.” Morris then left the hospital and headed to College City to Valadez's grandmother's house.

Deputy Morris arrived at the College City house and spoke with defendant, who was uncooperative and did not ask about Valadez's condition. When questioned about what happened at the barbeque, defendant “said he was home, but he had gone inside, and when he came back outside, [Valadez] was no longer there.” Regarding how Valadez received her injuries, defendant told Morris his parents told Valadez “that she had fallen down.” Morris noted defendant's hands did not show any signs of cuts or swelling.

Deputy Morris returned to the hospital approximately 30 minutes later. He spoke with Valadez again, who was awake and alert and in better spirits and did not appear to be intoxicated. Valadez told Morris she had an argument with her cousin and “at some point [defendant] intervened and he punched her, which caused her to black out.” She

did not remember anything after that. She also stated she did not want to press charges because she was “worried that her family would be upset with her and cause problems.”

*Trial Testimony--Valadez and her Family's Statements*

**Valadez**

When Valadez was first called to the stand by the prosecutor, she identified defendant as her uncle and testified that she did not want to testify in court (“be here today”) because “he’s my family.” She testified that the case against her uncle had already affected her relationship with others in her family, although she declined to provide details.

She then testified that on the day in question, she went with her children and her boyfriend, Juan Monroy, who had the couple’s only car, to a barbeque at her grandparents’ house in College City. Her uncle, defendant, was there. She drank heavily and argued with other attendees including her cousin, Angelina Silva, defendant’s daughter.<sup>1</sup>

The argument between Valadez and Angelina turned physical, and Valadez “got pushed off [her] chair” by Angelina. Family members separated the two women, but the argument continued, and eventually Valadez made her way or was brought toward Monroy’s car, still yelling and “saying things to Angelina.” After this point, she claimed not to remember much until she got to the hospital, as we explain below, although she did at times suggest she remembered getting into the car. She apparently had some memory of being hit, claiming she remembered “blacking out” *after* being punched, but she was not asked directly by the prosecutor about the assault. She later remembered that she had “bumped” her head on the dashboard getting into the car but did not remember getting injured as a result.

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<sup>1</sup> Because of a shared surname with defendant, we refer to Angelina by her first name.

Valadez initially testified that defendant had left the party before her argument with Angelina started and that she did not see him return at any point in time. However, she later acknowledged testifying at the preliminary hearing that she saw defendant return to the barbeque “[f]rom the road” and that her testimony at that hearing was “the truth.” She claimed to remember “waking up in the hospital” and talking to a nurse, but claimed not to remember how her face was cut or telling the nurse at the hospital that her uncle punched her in the face. She remembered talking to Deputy Morris at the hospital and telling him, “I know that I did not fall down. Someone punched me[,]” which she testified at trial was the truth. She claimed *not* to remember telling Morris that “out of nowhere, ‘[m]y uncle, Manuel Silva, came over and punched me[,]’ ” but again testified that she had told Morris the truth. She agreed that she had told Morris that she did not want to press charges against defendant because he was family, and it would cause her problems to do so. She agreed with the prosecutor that she *still* did not “want to be part of this case.” She was confronted with additional sections of her preliminary hearing testimony about what she told Morris, which we have detailed *ante*, and she claimed not to remember giving that testimony, although she claimed again at the outset to have testified truthfully during the preliminary hearing.

Valadez denied getting into a physical fight with Monroy, or that Monroy punched her in the face, testifying she would never lie and accuse defendant of punching her to protect Monroy. On cross-examination, she was pressed about this point, admitting that she had moved in with Monroy and his family soon after he “got out of prison[,]” denying that they had argued at the barbeque but testifying that she remembered physically struggling with him that night as he tried to get her into the car to leave the barbeque. She confirmed that Monroy was on parole and that his being with her was “violating parole” due to his 2011 conviction for domestic violence against her.

### **Juan Monroy**

Monroy confirmed Valadez's testimony regarding their relationship and living arrangement, as well as his 2011 conviction and parole status. He also confirmed attending the barbeque with her on the date in question. He confirmed that he had forced her into the car together with other family members, but did not remember her hitting her head on the dashboard or falling down at any point. After they drove away, he called Valadez's aunt, Alvia Hernandez, and told her Valadez was passed out, asking her to take Valadez to the hospital. He called Hernandez because he knew Valadez needed to go to the hospital but he did not want to get into trouble for being with her in violation of the no-contact order. When Hernandez arrived, they transferred Valadez into Hernandez's car and Hernandez drove to the hospital with Monroy following in his car.

Monroy did not recall whether Valadez had any injury to her face when he put her in the car at the College City house. He did not notice she was bleeding "until a block or so after" leaving the house. He did not remember seeing anyone punch Valadez, including defendant. He did not remember whether Valadez got injured in his car, but denied getting into a car accident, punching her, hitting her, or throwing her out of the car, and testified he did not remember anything happening that would have resulted in her injuries.

### **Colusa County Sheriff's Deputy Marvin Garibay**

Colusa County Sheriff's Deputy Marvin Garibay accompanied Deputy Morris to the College City house and translated a conversation between Morris and defendant's parents, who did not speak English. When asked about what happened at the barbeque, defendant's parents stated Valadez had been drinking and "fell off a chair."

### **Angelina Silva**

Angelina Silva went with her aunt, Hernandez, to the barbeque. Valadez and defendant were there. Valadez was drunk and argued with both Monroy and Angelina, who finally pushed her out of her chair. They fought again and later other relatives and

Monroy forced Valadez into the car as she kicked, screamed, and punched them. She hit her forehead on the car. Angelina did not see any blood on Valadez, and Valadez was still conscious as she and Monroy drove away.

Approximately 15 minutes later, Angelina heard Hernandez take a call from Monroy. Hernandez left the house and, when she returned later, she said she had told the people at the hospital that Valadez was injured when she “fell down.” Angelina testified Hernandez had said that because she didn’t want to bring up the family argument. Defendant was not present at any relevant point because he “had left down the road” to his friend’s house and did not return until after Monroy and Valadez had left.

### **Alvia Hernandez**

Hernandez testified along the same lines as Angelina, that Valadez was drunk and argued with Monroy and Angelina at the barbeque and that Angelina pushed Valadez, causing her to fall. Monroy later carried Valadez to the car as she struggled. She hit her head on the dashboard as Monroy and other relatives pushed her into the car. Hernandez did not see any blood on Valadez, either before or after she was put into Monroy’s car. Valadez was conscious when Monroy drove away, and defendant was not in the area during the relevant time period and did not punch Valadez.

Approximately 10 minutes after Monroy and Valadez left, Hernandez received a call from Monroy that Valadez had “passed out.” Hernandez agreed to meet him and left in her car. When Hernandez arrived, she saw that Valadez was passed out and bloody. Hernandez took Valadez to the hospital; Valadez remained unconscious during the drive. When Hernandez spoke with police, she told them Valadez “had fallen” at the barbeque and had been cut “probably from the fall.” At trial, she testified she did not know how Valadez got cut, because when Valadez left the College City house she “didn’t have a cut on her head.” Hernandez testified that defendant was not at the College City house when she arrived and she did not see him the entire time she was there. She further testified she never saw defendant punch Valadez.

### *Closing Arguments and Verdicts*

The prosecutor argued in closing that Valadez's initial statements to medical personnel and the police were credible. If she had wanted to protect Monroy as the actual assailant and lie about what happened, she would have agreed with the family's story that she fell down. The defense argued there was no direct evidence of defendant's involvement in the assault and that Valadez was drunk at the time. He argued at length that Monroy was the likely assailant. He argued that the case had not been proven beyond a reasonable doubt, because the evidence did not convincingly prove *how* Valadez was injured, or by whom.

At the conclusion of trial, the jury found defendant guilty as charged and found true the allegation of personal infliction of great bodily injury. The trial court denied probation and sentenced defendant to the middle term of three years, plus a consecutive three-year term for the great bodily injury allegation, for an aggregate term of six years in state prison.

### **DISCUSSION**

Defendant contends there was insufficient credible evidence to support his conviction for assault of Valadez. In particular, although he does not challenge any of the evidentiary rulings, he claims the facts upon which the jury relied were inherently improbable. He argues that Valadez's prior statements contradict the other evidence introduced at trial and are uncorroborated. As we explain, although we agree that a reasonable jury certainly *could* have viewed the evidence differently and declined to convict defendant, the evidence here was sufficient.

“On appeal, the test of legal sufficiency is whether there is substantial evidence, i.e., evidence from which a reasonable trier of fact could conclude that the prosecution sustained its burden of proof beyond a reasonable doubt. [Citations.] Evidence meeting this standard satisfies constitutional due process and reliability concerns. [Citations.] [¶] While the appellate court must determine that the supporting evidence is reasonable,



inherently credible, and of solid value, the court must review the evidence in the light most favorable to the [judgment], and must presume every fact the jury could reasonably have deduced from the evidence. [Citations.] Issues of witness credibility are for the jury.” (*People v. Boyer* (2006) 38 Cal.4th 412, 479-480; accord *People v. Smith* (2005) 37 Cal.4th 733, 739 [assessing the credibility of witnesses remains the exclusive province of the trial judge or jury].)

Evidence is substantial if “a reasonable and impartial mind could justifiably draw the same inferences therefrom that the jury necessarily drew in order to arrive at its verdict,” and “evidence does not become unsubstantial simply because other reasonable minds might differ as to what inferences should be drawn therefrom, or because this court as a trier of fact might have drawn different inferences.” (*People v. Bertholf* (1963) 221 Cal.App.2d 599, 603.)

Certainly the jury was in the best position to evaluate the credibility of the various witnesses, and the jury heard that Valadez was a recalcitrant trial witness who had told *everyone who asked her* the evening of the incident--medical as well as law enforcement personnel--that she had, indeed, been punched. In at least one conversation, she named defendant; in another, she identified an uncle as her assailant, albeit not by name. “A single witness’s uncorroborated testimony, unless physically impossible or inherently improbable, is sufficient to sustain a conviction [citation].” (*People v. Elwood* (1988) 199 Cal.App.3d 1365, 1372; accord *People v. Young* (2005) 34 Cal.4th 1149, 1181 [uncorroborated testimony of a single witness is sufficient to sustain conviction].) Here, although no other witness testified that *defendant* punched Valadez, her treating physician described Valadez’s injuries and symptoms as consistent with having been punched in the face. Further, defendant admitted to being at the house that evening. Although he told Deputy Morris that he was inside the house during the relevant time period, and then came out, the family members testified he had left to go to his friend’s house “down the road.” Valadez also said he had left the house but came back from

“down the road” right before he punched her. There is no dispute that Valadez was feuding with defendant’s daughter, and physically fighting with her that evening. Thus Valadez’s prior statements as to the cause of her injuries, admitted for their truth as prior inconsistent statements, were amply corroborated by other evidence.

Although defendant argues that “it is inherently improbable that [defendant] would come out of nowhere and for no reason punch [Valadez] in the face” and suggests it was much more probable that Monroy was the assailant, whether another scenario is also possible or even likely is not the test. Even the presence of unusual circumstances or justifiable suspicion in the testimony does not equate to inherent improbability.

“ ‘Although an appellate court will not uphold a judgment or verdict based upon evidence inherently improbable, testimony which merely discloses unusual circumstances does not come within that category. [Citation.] To warrant the rejection of the statements given by a witness who has been believed by the [trier of fact], there must exist either a physical impossibility that they are true, or their falsity must be apparent without resorting to inferences or deductions. [Citations.] Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.]’ . . . .”

(*People v. Barnes* (1986) 42 Cal.3d 284, 306, quoting *People v. Thornton* (1974) 11 Cal.3d 738, 754; accord *DiQuisto v. County of Santa Clara* (2010) 181 Cal.App.4th 236, 261.) Further, as we have described, here there was *some* corroboration and even *some* evidence of *motive* for the actions by her uncle that Valadez described. On this record, we need not disturb the verdicts.

“Except in . . . rare instances of demonstrable falsity, doubts about the credibility of the in-court witness should be left for the” factfinder’s resolution. (*People v. Cudjo* (1993) 6 Cal.4th 585, 609.) Testimony may be rejected as inherently improbable or incredible only when the testimony is “ ‘ “unbelievable *per se*,” ’ physically impossible

or “wholly unacceptable to reasonable minds.” ’ [Citations.]” (*Oldham v. Kizer* (1991) 235 Cal.App.3d 1046, 1065.)

Defendant argues that the present case is comparable to *People v. Carvalho* (1952) 112 Cal.App.2d 482 (*Carvalho*), where the appellate court reversed a conviction for kidnapping, finding the testimony of the accuser to be unbelievable per se. In *Carvalho*, the complaining witness alleged that the defendant accosted her in her home, threatened her with a gun, and attempted to choke her with an electric cord. The jury found Carvalho guilty of kidnapping. (*Id.* at pp. 483-484.) Although it noted that if “the testimony of the complaining witness is to be believed, no reasonable person could doubt that she was forcibly abducted and transported to various places in the county of Los Angeles against her will and without her consent” (*id.* at p. 488), the appellate court labeled the testimony of the victim as inherently improbable. (*Id.* at p. 489.)

Although the victim (defendant’s estranged wife) had testified she was in fear of the defendant, she had also testified to multiple opportunities to get away from him. He left her outside and free to leave while he accessed her home (to unlock it for both of them) through a window, and she stayed outside and waited for him. She later went with defendant to his home, had sex with him, and remained in the bedroom unrestrained while he took a bath. Not only did she remain in the house, she joined him in the bathroom and assisted his bath. She had multiple other chances to escape or get help, and willingly declined to do so. Finally, she did not report the kidnapping for a month. (*Carvalho, supra*, 112 Cal.App.2d at pp. 486, 489-490.)

In this case, the victim’s admitted actions did not contradict her words as was the case in *Carvalho*. Instead, the testimony of *other* witnesses contradicted her words. These other witnesses were also family members with arguable interest in defendant’s acquittal. The jury could have reasonably believed that Valadez’s original statements about the happenings surrounding her injuries were more reliable than her later claims not to remember what happened, particularly given her admission to the police that she

did not want to press charges and did not want her family to be upset with her for implicating her uncle. The jury could have reasonably determined that the various and varied explanations for the victim's injuries by other family members were an attempt to protect the actual perpetrator, and that defendant's admissions to Deputy Morris were sufficient to place him at the scene during the relevant time period.

Although we agree that the events surrounding Monroy's involvement in the happenings that evening may have generated "justifiable suspicion" as to whether he himself assaulted Valadez in the car, the jury heard evidence of his background and involvement at trial and rejected the defense theory argued in closing that Valadez was lying to protect Monroy. The jury was also entitled to reject the family's testimony that defendant was not the assailant, and that Valadez was either injured in the fight with Angelina, by hitting the dashboard of the car, by Monroy, or that she somehow fell and hit her head, as explained by the hosts. Sufficient evidence supports the jury's verdicts.

### **DISPOSITION**

The judgment is affirmed.

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/s/  
Duarte, J.

We concur:

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/s/  
Blease, Acting P. J.

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/s/  
Murray, J.